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ANNEXATION OF HAWAII.

REMARKS

OF

HON. J. B. FORAKER,

OF OHIO,

IN THE

SENATE OF THE UNITED STATES,

JUNE 25, 1898.



WASHINGTON.

1898.

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REMARKS
OF
HON. J. B. FORAKER.

The Senate having under consideration the joint resolution (H. Res. 259) providing for the annexation of Hawaii, and Senator TURLEY having the floor—

Mr. TURLEY. The next point which is made was made by the Senator from Ohio [Mr. FORAKER], and I believe by the Senator from Massachusetts, but I will quote from the Senator from Ohio. He first said:

I am loath to interrupt the Senator, but I have been desiring for some minutes since he got on this proposition to put a question to him. The question I desire to put is this: Would it not be competent for the Congress of the United States to prescribe by law certain terms and conditions upon which any independent government might come in and become a part of the territory of the United States by complying with the terms and conditions prescribed by the Congress of the United States?

Suppose, for instance, to make plain what I have in my mind, we should provide that any independent people or government, doing what this preamble recites the people of Hawaii have done, should, upon complying with certain conditions, those and others that we might see fit to make, become a part of our territory, they notifying us that they had complied with all the terms and conditions, could we not thereupon declare them to be annexed and make them a part of the territory of the United States, and would not that be a more competent power for the Congress than it would be for the treaty-making power?

Now, Mr. President, I submit this idea in reply to that proposition: Certainly there is nothing in the Constitution which squints at any power to pass any such law. The only line on this subject in the Constitution, outside of that lodging the treaty-making power in the Senate and the President, is the provision about the admission of new States. This proposition involves the idea of a general law, directed to every independent country in the world.

If it is good for one, if it is good for two, it is good for all. If the proposition is true, to-morrow Congress could pass a law providing that every independent power in the world, any or all of them, could become a part of the United States upon complying with certain conditions; that the most ignorant population could come in on the same terms with the most educated and intelligent; that the Malays in the Philippine Islands, or these Kanakas in Hawaii, or the negroes in Africa, any government that was an independent power, could come in on these terms and conditions.

Mr. FORAKER. Mr. President—

The PRESIDING OFFICER (Mr. FAULKNER in the chair). Does the Senator from Tennessee yield to the Senator from Ohio?

Mr. TURLEY. Certainly.

Mr. FORAKER. Will the Senator from Tennessee allow me to suggest that the point he is now making will not go to the question of power, but only to the question of policy, about which I was not talking when I made the remarks from which he is quoting. It might be good policy or bad policy in any given case.

Mr. TURLEY. Now, in reply to the Senator from Ohio, I submit that when you are unable to find in the Constitution of the United States an express grant of power to do what you are seeking to accomplish, or, in other words, if a proposition is submitted as constitutional and it can not be found expressly within the Constitution, or it does not appear to be necessary and inherently proper to carry out some expressly granted power, then it is a legitimate argument to see where it leads in order to determine whether the framers of the Constitution have intended to vest it where it is claimed it has been vested. In other words, I submit that in all doubtful questions—

Mr. FORAKER. Will the Senator from Tennessee excuse me for interrupting him again?

Mr. TURLEY. Certainly.

Mr. FORAKER. I did not mean to express, and I hope the Senator did not understand me by anything I said when making the remarks which he has quoted to express, an opinion as to whether that would be good policy or bad policy. I was simply speaking of the question of power and giving that as an illustration of what I thought might possibly be done, and constitutionally. It does not follow that because I think that could be constitutionally done I would advocate it as a good measure.

Mr. TURLEY. Certainly I did not understand the Senator from Ohio as saying that any such proposition would be good policy, but I understand him to say to me now that the position I am arguing is one of policy, and that what I say throws no light on the question of power. I do not think I mistake him on the point that my argument is applicable to the question of the policy of the idea and not to the question whether the power really exists.

Now, what I am attempting to reply is, if you are seeking in the Constitution some power which is not expressly granted or which is not clearly granted, in other words, if as a court or as Senators here determining upon the constitutionality of the question there may be doubt as to whether power exists under the Constitution to do certain things, it is a legitimate argument to see where that power would lead us to if it exists. In other words, we may argue against the existence of the power from the fact that great danger and peril would come to the country if such power really exists. I mean in all doubtful cases.

Of course, if it is an expressly granted power there can be no question of it; but wherever it is a question of doubt as to whether the power exists, if we see that the existence of the power would be dangerous, that its exercise would threaten the destruction of the country, we may then look to that as a reason for saying the framers of the Constitution never intended to vest in any branch of the Government the right to exercise such power.

So I say now that if the question had been asked in the convention which framed the Constitution, "Have we invested Congress or do we intend to invest Congress with power to pass a law under which every independent nation existing on the globe can come into this compact and into this Government and become inherent parts of it?" the reply would have been in the negative, that it never entered the minds of the framers of the Constitution

that they were investing Congress or any department of the Government with the power by any such law as is referred to in this proposition to admit into this Union or into this Government as component parts of it any existing power in the world.

Now, I go a step further to the next proposition. The Senator from Ohio very frankly admits that if a foreign power were by agreement to cede us a part of its territory upon certain terms and conditions agreed upon, it would necessarily have to be done by treaty. I will read the whole quotation:

Mr. FORAKER. If the Senator will allow me just one word further, I agree with almost all he has said; but at the point where I differ from him the difference becomes vital. I think that when you make a compact with a foreign power it must be in the nature of a treaty, but that contemplates the continued existence of the foreign power. Therefore, if a foreign power were by agreement to cede to us a part of its territory upon certain terms and conditions agreed upon, it would necessarily have to be done by treaty.

And further on he says:

In a word—

In order to understand this proposition, I will read a little from what the Senator from Georgia [Mr. BACON] said:

Mr. President, I am utterly unable to see the force of that argument. It is in either case an agreement by which sovereignty existing over certain territory is abandoned, or rather annulled, and by which the sovereignty of this country is given to it. Why should the change of sovereignty as to a part be the subject-matter of negotiation and the change of sovereignty as to the whole be not the subject-matter of negotiation?

The Senator from Ohio [Mr. FORAKER] replied:

In a word I can answer that. Because there is no continuance of a compact. The whole thing is at an end by its consummation.

Now, the idea seems to be this, if I understand it, and it is very plainly and clearly expressed, that even though the right to be gained has its inception in a compact or agreement, still if it is not a continuing compact, if, in the language of the Senator, there is no continuance of a compact, then it ceases practically to be the subject-matter of treaty; in other words, that only those things have necessarily to be done by treaty which are done between two nations which continue in existence, and where there is a continuance of the contract or a continuance of the contract.

I produced authorities yesterday and discussed the proposition that a treaty is simply a contract between two sovereign powers; that nations deal with each other by treaty like individuals do by contract. It is no objection to the validity of a contract as a contract, it does not deprive it of its character as a contract, that it is consummated in its execution; that there is no continuity in it; that it ends when it is made; that it is one act and there is nothing further to be done.

Every deed, every grant where the money is paid, is a contract of that sort. There is no continuity in it. There is no continuance; nothing further to be done. It is ended completely, just as the treaty by which Russia conveyed to us Alaska. When the money was paid, it was an ended contract, as every executed contract is.

Mr. FORAKER. Mr. President—

The PRESIDING OFFICER. Does the Senator from Tennessee yield to the Senator from Ohio?

Mr. TURLEY. Yes, sir.

Mr. FORAKER. If the Senator will not be interrupted I should like to ask a question.

I listened with a great deal of interest to his discussion of the term "treaty" and his definition of what is meant by the word "treaty." I understood him to define it yesterday, as he has repeated to-day, that a treaty is simply a contract between sovereign powers. He also insisted, as other Senators have done, that the treaty is not a treaty until it is consummated.

Of course everybody agrees with him as to that. The treaty that was negotiated between this Government and the Hawaiian Republic, therefore, has never become a treaty. It has been simply negotiated. It will be a treaty if it shall be ratified, and not otherwise. Until the moment of its ratification there is no contract between Hawaii and the United States.

Mr. WHITE. Mr. President—

Mr. SPOONER. What of the cession which you say you accept?

Mr. WHITE. That is exactly what I was about to ask.

Mr. FORAKER. The one referred to in the joint resolution? I will come to that in a moment. A great deal has been said, if the Senator from Tennessee will not object—

Mr. TURLEY. I do not object.

Mr. FORAKER. I will take occasion now, as other Senators have interrogated me, to make answer to that.

Mr. TURLEY. I do not object.

Mr. FORAKER. A great deal has been said about the word "cession" being used here.

Mr. WHITE. It is in the preamble.

Mr. FORAKER. It might be that in framing this, if I had framed it, I would not have used that word, but I see no objection to the use of it, used as it has been used. The "said cession," the resolution reads, is accepted. What cession? That which is referred to in the preamble which immediately precedes, and in the preamble the facts are correctly recited, for the preamble recites that a treaty has been negotiated; in other words, that, in accordance with the provision of the constitution of the Hawaiian Republic, the Hawaiian Government has negotiated and done all it can do and all that it is necessary for it to do to manifest its willingness to make an agreement on its part to cede the territory belonging to the Republic of Hawaii. Then follows the resolution, and referring to that preamble and to that transaction, it uses the expression, "said cession." Nobody can misunderstand that language as it is thus employed.

Mr. LINDSAY. Mr. President—

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from Kentucky?

Mr. FORAKER. Certainly.

Mr. LINDSAY. If it will not disturb the Senator, I should like to present this idea to him.

Mr. FORAKER. I am answering a question and I hope not to get too far away from it.

Mr. LINDSAY. This will be pertinent, I think, to the question.

Mr. FORAKER. Very well.

Mr. LINDSAY. The cession named in the act is the cession provided for in the treaty, as I understand it.

Mr. FORAKER. Yes, sir.

Mr. LINDSAY. Article 7 of the treaty provides:

This treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate, on the one part.

I wish to ask the Senator whether a joint resolution, concurred in by the two Houses but passed through the Senate by less than a two-thirds majority, can be treated as equivalent to the ratification of a treaty by the President of the United States, by and with the advice and consent of the Senate?

Mr. FORAKER. It is not precisely the same thing, but the legal effect of the whole transaction is necessarily the same, according to the view I entertain of the power of Congress with respect to that particular matter, because the result is an absolute cession of the territory belonging to the Republic of Hawaii and an absolute acceptance of it on the part of the United States. Now, I shall show why that is so.

Mr. LINDSAY. One other question, and then I will not interrupt the Senator further.

Mr. FORAKER. Certainly; with pleasure.

Mr. LINDSAY. After this joint resolution shall have been adopted and approved by the President and presented to the Hawaiian authorities, I ask the Senator if they will not have a perfect right to refuse to accept the benefit of the joint resolution upon the ground that a treaty has not been ratified by the President, by and with the advice and consent of the Senate of the United States?

Mr. FORAKER. Undoubtedly they would have a right to ignore all the action that they took previously having reference to the negotiation and ratification of the treaty. They could treat this whole question *de novo* and take action with respect to this. I do not know that anybody ever contended for the contrary.

What I am commenting upon is that which the Senator from California called my attention to. The employment of the word "cession" here is not ambiguous and it is not an inappropriate word to employ, because it has reference to something that immediately precedes, which is clearly defined, and which is in strict accordance with the facts.

Mr. WHITE. Mr. President—

The PRESIDING OFFICER. Does the Senator from Ohio yield to the Senator from California?

Mr. FORAKER. Certainly.

Mr. WHITE. We all know the Senator from Ohio is distinguished in law as he is in other avocations. I wish to ask him whether he does not think a cession means a grant, and whether a grant does not presuppose not merely the execution of an adequate instrument, but its acceptance by the grantees, and if that must not be so in the case of a cession?

Mr. FORAKER. Undoubtedly. I stated when I first touched upon this matter that if I had been drafting this resolution I might have employed a different word. But what the word ordinarily means is not necessarily what we are to be governed by here. We must look at the whole instrument and see what it is that the word is intended to mean. When you look at the whole instrument the word "cession," as there employed, has reference to the preamble, and whether it be a correct description of that which the Hawaiian Republic has done or not, it can not mislead anybody, because, interpreted in the light of the context, it simply means to refer to the fact that the people of Hawaii have done all in their power necessary for them to do to manifest to the people of the United States a willingness on their part to cede all their territory to the United States upon the terms and conditions here imposed.

Now, that is all that word means; all it can be made by anybody to mean; all that it can be claimed that it means. Of course it is true that the ordinary interpretation of the word "cession" would imply a consummated transaction—a deed, a bargain, sale, conveyance; but we have to interpret this word according to its context.

Now, coming back to the point where I was when I was interrupted and addressing myself to the point I wanted to make to the Senator from Tennessee, if I recollect correctly I had gotten far enough along to call attention to the fact that he had been arguing there could not be any treaty or any contract until the consummation of it. His contention was that a treaty was simply a contract and that there was not a contract until the treaty was ratified. That contention is correct. A treaty can not be anything but a contract, and there can not be a contract until we approve. But, Mr. President, the Senator from Tennessee will not differ from me when I say there can be no contract unless there be at least two parties to it.

The very minute that there ceases to be two parties to it there is no longer a contract; it is something else; there is no mutuality. The Senator and all the other Senators on his side of the question have argued that there is nothing here, no cession, no contract, on treaty, until this transaction is consummated. Now, I ask Senators to state whether or not there is a contract after it has been consummated. I am speaking of the treaty and not of this resolution. After this treaty shall have been ratified by the Senate, as we were requested by the President of the United States to ratify it, will there be any continuing contract?

No, certainly not; for in the consummation of that transaction the Republic of Hawaii ceases to be, and it is an absurdity on the face of things to say that there can be a continuing contract and that it ought to be a treaty for that reason between the United States and a power that is no longer in existence. Therefore it is that I say—

Mr. WHITE. Mr. President—

Mr. FORAKER. If the Senator from California will allow me just a moment, I say there are cases in which territory may be ceded where it is not at all the proper subject-matter, according to the view I take of it, for a treaty.

Mr. WHITE. I desire to inquire of my friend from Ohio whether the Committee on Foreign Relations, of which he is a member, did not report and earnestly advocate, until within a very short period past, the adoption of such a treaty absurdity as that which he describes?

Mr. FORAKER. Mr. President, I did not mean to say that this particular case was an absurdity. I should have said there might be cases where it would be an absurdity to contend that a cession of territory could be acquired only by treaty. But I will say to the Senator from California that I never did have the idea that this was a proper subject-matter for treaty, and I will tell you why. Let me put a case. When we took the Louisiana purchase by treaty, we did not take all the territory of France, but only a certain designated portion of it—that in this country, and that described by the treaty.

If we had taken that territory without anything more being stipulated for than merely the payment of a certain sum of money, the whole transaction would have been consummated when the treaty was signed and the money was paid, and that would have

been the end of it. That might have been done, I contend, by an offer on the part of France to cede to us that territory and an acceptance on the part of the Government of the United States and the appropriation of the money by the Congress of the United States and the payment of that money. That would have closed it all.

Mr. PLATT of Connecticut. Mr. President—

Mr. FORAKER. But, if you will allow me just a moment, there was something else in that treaty. Certain rights were preserved to the people living in that territory, and we stipulated that those rights should be preserved to them. Therefore, there was a continuing obligation, and there were two contracting parties continuing after the consummation of the transaction, the one to enforce the transaction as against the other. That was a case of a continuing contract. It was a proper case for a treaty. It could not have been anything else, having that continuing obligation, except only a case of treaty.

Now, suppose another case. Suppose England were to-day to offer to cede to the United States the Bermuda Islands for the payment of a stipulated sum of money and that was all there was of it. Suppose she were to say to us, in a proper way, "Pay us \$5,000,000 and take those islands." I think we could take them, and take them constitutionally, if we would simply say, "Here is your money; we accept your offer." It would not have to be by treaty, although there would be two parties remaining in existence to the transaction to enforce the contract, if there were any contract to enforce or anything to be enforced.

But suppose that instead of saying, "Take these islands for so much money, cash down," England should say, "We propose that you shall take them for so much money, but you shall guarantee to us the enjoyment of a coaling station, which we reserve, and guarantee to us certain other rights in these islands which heretofore we have enjoyed," and suppose we had accepted her offer upon those terms; that would of necessity be the subject-matter for a treaty, because, after the consummation of the contract by the signing of it, there would remain two existing parties to it, one to enforce it against the other, and there would remain certain rights and conditions upon which they had stipulated. It could not be anything else than the subject-matter of a treaty.

But this is a wholly different case. Here comes the Republic of Hawaii and says: "We are authorized by the constitution of our Government to enter into a treaty for the cession of these islands to the United States. We have entered into such a treaty upon our part; here it is; we propose it; we offer it to you. Will you ratify it?"

Mr. WHITE. Will the Senator from Ohio permit me to ask him whether there can be a treaty unless both parties have agreed to it, and whether, therefore, the provisions of the Hawaiian constitution have been to any extent complied with?

Mr. FORAKER. I will answer the Senator from California at as full length as he desires if he will only let me finish the proposition which I was about to put.

The Hawaiian Republic comes and says not that "we are willing to cede to you one of our group of islands in order that you may make a coaling station there;" not that "we are willing to cede to you a part of our territory for some stipulated purpose and upon certain stipulated conditions;" but she says, "We come and we

give to you all our territory, and upon your acceptance of this proposition we cease absolutely and forever to be."

Mr. President, there is not any contract, and, therefore, no treaty, until that proposition has been accepted and ratified by a two-thirds vote of the Senate—until that moment there is absolutely nothing that has any legal effect or binding force whatsoever upon anybody.

Is there anything in the nature of a treaty remaining after its acceptance? There are two parties to a contract necessarily. Can there be two parties when only one party is still in existence? The Hawaiian Republic, according to this proposition, ceases to exist the very moment this transaction is consummated. In the consummation of it one party perishes.

Therefore, Mr. President, there is not any contract remaining; and, according to the definition insisted upon by Senators who are arguing here in opposition, there is no treaty, for they tell us with grave emphasis that a treaty is a contract. That is true; but you can not have a contract, and therefore you can not have a treaty, unless you have two parties to it. The very moment you destroy one of the parties your treaty is gone, your contract is gone. But suppose now within a year after this treaty, if it should be ratified and would be consummated—suppose within a year after its ratification we should refuse to pay the money or do something else that it is stipulated we are to do upon the consummation of that transaction, would there be anybody in existence to compel us to do it?

The Republic of Hawaii would be no longer in existence; the Republic of Hawaii, with all the machinery of government, perishes the very minute this transaction is consummated, and the people of Hawaii become subjects of the United States; they become merged with us; they cast in their lot with us; they can not call us to account; it is our common obligation, and they treat with us, relying that we will act in good faith, and they take the risk of that. There would be a treaty, an executed instrument, but no longer in existence except only as a consummated transaction, because there would be nobody to enforce the provisions of it.

Therefore it is, Mr. President, that I say with respect to this matter of acquiring territory that there are cases where of necessity, it seems to me, the acquisition should be by treaty, and there are cases—and this is one of them—where the acquisition should be by a legislative act of Congress. I see no difficulty about the acquisition of the territory of Hawaii in this way for the reasons I have undertaken to state.

I have occupied so much of the time of the Senator from Tennessee that I owe him an apology. I did not think I would interrupt him to this extent, and would not have done so had not other Senators joined in with interrogatories.

Mr. TURLEY. I am glad to yield to the Senator.

Mr. ALLEN. Will the Senator permit me to ask him where he gets his constitutional power to annex by a joint resolution?

Mr. FORAKER. I will ask the Senator from Nebraska where he gets his constitutional power to annex by treaty? The Constitution of the United States is silent on that subject. What does the Constitution of the United States say about the annexation of territory? Not one word. It is one of the implied powers; and I contend that it is inherent. But Senators here take exception to that, and say this is a Government of limited powers; that the

organic law of this country is the Constitution made by the people thereof; and they say the General Government has no power except only that which is delegated.

Pass by, for the sake of argument, the proposition that it is an inherent power of our sovereignty, as it is of sovereignty generally, and I answer the Senator that it is included within the implied powers. The Congress of the United States is especially empowered to promote the general welfare. If the acquisition of an island in the sea be necessary to the promotion of our general welfare, Congress is expressly endowed by the Constitution with power to acquire it.

It is not necessary that I should speak about the war power. I do not rest my purpose to vote for this acquisition upon anything connected with the war. I was just as unequivocally and unqualifiedly for the acquisition of Hawaii a year ago or ten years ago as I am now. The war has but developed the necessity which those favoring the acquisition of Hawaii foresaw years ago would be developed whenever we might come to such a time as we have now reached, when we are in war, and when we are required to keep a navy in the Pacific in order that we may protect our interests.

So I say, Mr. President, if the Congress of the United States sees fit, in the exercise of her power to promote the general welfare, to annex this island or any other, it is competent for Congress to do so.

Mr. ALLEN. Then I will ask the Senator another question, with his permission—

Mr. FORAKER. I will say I mean in this kind of a case, with the limitations I stated a while ago.

Mr. ALLEN. Have we the power to deal with any foreign nation except by treaty?

Mr. FORAKER. I think so, undoubtedly.

Mr. ALLEN. I think we have not.

Mr. FORAKER. There is no provision in the Constitution which says we can not deal with other nations otherwise than by treaty.

Mr. ALLEN. That is not the question. The question is whether we have the power to do it.

Mr. FORAKER. The Supreme Court of the United States held that there was such a power under the reciprocity clause of the McKinley Act—

Mr. ALLEN. That was by treaty.

Mr. FORAKER. It was not by treaty.

Mr. ALLEN. Certainly it was.

Mr. FORAKER. No; we simply provided by law that whenever the President of the United States should ascertain a certain fact, he then might make a certain declaration which would govern the rates of duty on imports from certain countries. There was no treaty about it.

Mr. ALLEN. We authorized the President of the United States to enter into a treaty by reciprocity.

Mr. FORAKER. But the Senate did not ratify it, and the President did not enter into any treaty. He simply ascertained certain facts. The Supreme Court of the United States held that it was constitutional for Congress to so provide, because it was only an exercise of administrative power, and the President was engaged only in administrative acts when he ascertained those facts.

Mr. ALLEN. Congress authorized the President to consum-

mate certain things if he found the existence of certain facts. The act of Congress, together with the act of the President, made a treaty.

Mr. FORAKER. But the House did not join in it except to help make the law. The Senator was talking about a treaty which the Senate ratified. The Senator from Nebraska, if he will stop and think for a minute, will see that the suggestion involved in his interrogatory is not at all tenable, not only in that case, but in many others, doubtless.

Mr. ALLEN. I can not myself conceive of an instance where we can deal with another nation involving the question of jurisdiction or territory independent of the methods of a treaty.

Mr. FORAKER. We did so deal in the case I put. I do not think of any others now, but there are doubtless others, and I will try to think of some of them by the next session of the Senate.

But, however that may be, this is a case where, if I am right in the view I have undertaken to express, it is not proper to deal with it by treaty, at least not so proper as to deal with it by an act of Congress.

When I so express myself as to indicate that I think it might in some sense be proper to deal with it by treaty, I want to be understood. The explanation is this: When they undertake to negotiate a treaty on the other side, and we join with them in agreeing to a treaty, and it is submitted to the legislative branch yonder and to the Senate here, and is ratified and becomes a treaty, although it may not be the proper subject-matter of a treaty, it amounts to the same thing in legal effect as legislation, because it is the expression of a willingness and the offer on their side to make a cession and a willingness and an actual acceptance on our part of that which has been offered.

That is all there is in the legislative act, and the one is therefore the equivalent of the other in ultimate results. I think it is more regular to do it as we are now proposing to do it than by treaty, because, as I say, you can not have a treaty without having a contract, and you can not have a contract without having two parties to it.

Mr. ALLEN. That is true.

Mr. FORAKER. And if one party disappears on the signing of the contract you no longer have a contract.

Mr. WHITE. What becomes of it?

Mr. ALLEN. There are two parties to the contract up to the moment of its execution.

Mr. FORAKER. But there is no contract until it is executed.

Mr. ALLEN. Very well; the moment the contract is signed and delivered it is an executed contract.

Mr. FORAKER. But one party is dead and the contract can not continue as the term "treaty" implies.

Mr. ALLEN. Very well; but that party did not die until after the delivery of the contract.

Mr. FORAKER. Suppose you do not pay the money, who will there be to enforce payment? The people of Hawaii become merged into the United States.

Mr. ALLEN. What is true of a treaty with the United States is true of any treaty.

Mr. FORAKER. No; it is not true of any treaty, because when the term "treaty" is properly employed it has relation to a continuing contract between sovereignties—sovereignties which will exist after the contract.

Mr. ALLEN. Not necessarily.

Mr. FORAKER. As in the case I undertook to put before, as an illustration, of England ceding to us the Bermudas. She would part with a portion of her territory by treaty. That would be by contract, and she would remain in existence to execute and enforce the contract according to its terms and provisions, if we did not.

Mr. ALLEN. But the fact that one party may die after the execution of the contract does not change the binding force of the contract.

Mr. FORAKER. What I wanted to say to the Senator, and what I have been trying to say all the while, is that while you can legitimately annex these islands by what we call a treaty, yet you can just as legitimately do it, and more appropriately do it, by an act of Congress, by a joint resolution. You can do it more appropriately, because, in the first instance, when you undertake to do it by treaty the transaction amounts to nothing more than a tender on the part of one side and an acceptance on the part of the other, and that is all there is in the legislation that we are now considering.

Mr. ALLEN. That is a ground I contest seriously.

Mr. FORAKER. Allow me to say further to the Senator, I wanted to finish the answer to the other question.

Mr. ALLEN. I should like to say this, that I have not any more doubt about the lack of power to annex the Hawaiian Islands—the lack of constitutional power outside of treaty methods or regulations—than I have of my existence, not the slightest. It is only an indirect way of undertaking to destroy the necessity of having a two-thirds majority for a treaty in this Chamber.

Mr. FORAKER. Mr. President, whatever may be the purpose, the Senator can have any interpretation of that he wants; that is not what I am talking about. If we had two-thirds, no doubt the treaty would have been ratified; but from the beginning, as I have been contending throughout this debate whenever I have taken occasion to say anything at all, I have contended that it is more appropriate to do this by legislation, for the reasons I have indicated.

Mr. SPOONER rose.

Mr. FORAKER. I hope the Senator from Wisconsin will wait until I answer the Senator from Nebraska. I shall be glad to answer the Senator from Wisconsin or anybody else if the Senator from Tennessee will allow me. This is one of those questions I have convictions about. They may be wrong, but I have them and I have my reasons for them, and nobody can ask me any question which I can not at least undertake to answer and give the reason why I entertain that opinion.

Senators talk about it being unconstitutional to annex except only by treaty, as though the Constitution of the United States had provided that there should be annexation by treaty. Mr. President, the Constitution of the United States is silent on the question of the annexation of territory. It does not seem to have entered into the minds of the framers of the Constitution to put into that instrument any express provision on that subject. They contented themselves, as they wisely did with other subjects, in regard to this subject with a general provision. They gave to Congress the power to promote the general welfare, and that carries along all the implied powers essential to the consummation of that purpose.

When they came to the treaty-making power they did not say in the Constitution what should be the subject-matter of a treaty. They simply said that treaties might be negotiated by the President, subject to ratification by the Senate; they did not say what we should treat about, and I agree with Senators on the other side that a treaty is a contract. You can not have a contract unless you have two parties to it, and you do not have any contract—that has been your contention throughout—until the treaty has been signed on both sides. The very minute that is done one of the parties is gone, and there is no continuing contract. Therefore it is simply a cession on their part and an acceptance on ours, and it might be done just as well by legislation as otherwise.

Mr. CLAY. I understood the Senator to say that a treaty was a contract which required two parties——

Mr. FORAKER. At least two.

Mr. CLAY. Two parties or more; and if we accepted this territory one party was done away with, and therefore this is not a treaty, and that we could acquire this territory by legislation instead of by a treaty.

Now, I should like to ask the Senator, if that be true, is not his position simply this: That if we treat with the Government of those islands for a part of the islands, they reserving the balance of them, then it would be a treaty and it would require a treaty to acquire that territory; in other words, if we simply take a part of the country, then a treaty is necessary to acquire it; but if we take the whole of it, then it requires simply legislation. Is that the position of the Senator from Ohio?

Mr. FORAKER. I stated that position here without any qualification in that way a few days ago when engaged in a colloquy with the senior Senator from Georgia [Mr. BACON]. I want to qualify it, as I should have done at the time, to this extent: There may be cases, as I have already illustrated in the remarks I have been making now, where it is not necessarily the subject-matter of a treaty to accept a part of the territory of a foreign country, but in most cases it would be, and I illustrated that—the Senator was not here, and I will be pardoned for repeating the illustration—by supposing that England were to-day to offer to cede to us the Bermuda Islands——

Mr. CLAY. Or Canada.

Mr. FORAKER. Or anything. Suppose she would offer to cede to us one of her islands in the sea for a stipulated sum of money and the Congress of the United States, or the President of the United States, representing both, would signify our willingness to accept and we should appropriate the money and pay it, it would not be necessary to have any treaty about it, I apprehend.

There is nothing in the Constitution which requires a treaty. It is a tender on one side and an acceptance on the other, but if, instead of making it in that simple way, she were to tender to us one of those islands for so much money, saying: "I will give you the island, subject, however, to the right, which I reserve, and which you guarantee to me for the enjoyment through all time to come, of a coaling station," or of some other right or privilege there, where she has been heretofore supreme, and we were to accept the cession subject to the terms and conditions, there would be a continuing obligation, and there would be two continuing contracting parties, one of which could enforce it against the other, and that would of necessity, as it seems to me, be a proper

case for a treaty, and not a case for acceptance by an act of Congress.

But that is not this case, and I want to distinguish this case from that. I say, as a broad proposition, that the Congress of the United States has power expressly given to it to promote the general welfare, and if we deem it a promotion of the general welfare to acquire any island of the sea that has its own government—but I will take the case before us—if we deem it to be a promotion of the general welfare to accept the cession from the Republic of Hawaii of all its territory, one of the conditions being that the Republic of Hawaii ceases to be, it is not a proper case for a treaty, for the very minute the treaty is consummated there is no treaty—there is no contract, for one of the contracting parties is politically dead and gone.

Mr. ALLEN. Will the Senator permit me again a moment?

The PRESIDING OFFICER. Does the Senator from Ohio yield?

Mr. FORAKER. I yield by the permission of the Senator from Tennessee [Mr. TURLEY], who is entitled to the floor.

Mr. ALLEN. I beg the Senator's pardon. This resolution recites in the preamble that "the Republic of Hawaii having, in due form, signified its consent" for the cession of its sovereignty. Then it resolves:

That said cession is accepted, ratified, and confirmed.

Is not that a treaty, if the joint resolution passes?

Mr. FORAKER. If it is, then all the objections which have been urged to this resolution fall to the ground, for the objectors say they would not object if it was a treaty. I am assuming, for the sake of this argument, that their objections are well taken, that it is not a treaty, but a joint resolution or an act of Congress. I have said it is equivalent to a treaty.

Mr. ALLEN. What I want to call the attention of the Senator to is this, that it recognizes the existence of two parties to this transaction, the Republic of Hawaii on the one hand and the Government of the United States upon the other, and the necessity of the consent of both of these parties to annexation. What is that contract, treaty, or stipulation between these sovereigns?

Mr. FORAKER. With that question I am not concerned.

Mr. ALLEN. I think the Senator ought to be concerned.

Mr. FORAKER. I am perfectly willing to be concerned in order that I may accommodate the Senator from Nebraska. What I meant to say was—not to cavalierly dismiss the question the Senator would ask—the character of my argument does not involve a consideration of that matter.

The question before us is whether it is competent to acquire this territory by act of Congress, it being conceded that it would be competent, as I understand it is conceded to acquire it by treaty. I have said I think it would be competent to acquire it either way, and I explained why. But I have said also that I think it would be more appropriate to acquire it by joint resolution or by bill, by act of Congress, as we are now proposing to acquire it, than by treaty, for the reasons I have given.

It is true that the joint resolution recites that the Republic of Hawaii have indicated a willingness to make a cession of that territory. We do not say they have ceded it.

Mr. ALLEN. Yes.

Mr. FORAKER. Let us see if we do. I interpreted that word a while ago, but I think the Senator from Nebraska was not in the Chamber at the time. Let me read the whole of it, so that it may go into the RECORD, and so that what we are saying may be understood:

Joint resolution to provide for annexing the Hawaiian Islands to the United States.

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution—

That is true, is it not?—

to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, government, or crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, etc.

Now, what I say is that while the word "cession" ordinarily would imply that a cession had been actually made, that the deed had been signed, that it was in full force and effect, you must construe the word "cession" as there employed in the light of the context it refers to, the preamble; and when you refer to the preamble you see the word "cession" properly interpreted means nothing more as here used than a declaration on our part that we will accept the tender which they have expressed a willingness to make. Whether the word was appropriately used or not, that is what it means of necessity.

Mr. ALLEN. When we pass this resolution and it becomes a law, the transaction is consummated except the delivery of the property.

Mr. FORAKER. It would have to be accepted on the other side. This is not the ratification of a treaty. We can not by a joint resolution annex Hawaii.

Mr. ALLEN. But the joint resolution says so.

Mr. FORAKER. We can recite the fact that they have manifested a willingness, as shown by the treaty which we had in mind when that joint resolution was drafted, to make a cession to us; but when we do not ratify the treaty, but do something else, namely, pass a joint resolution, the transaction is not consummated until they agree to it.

Mr. ALLEN. Will the Senator permit me a word further?

Mr. FORAKER. Yes.

Mr. ALLEN. The joint resolution reads:

That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

Mr. FORAKER. I say the whole phrase must be interpreted, as I said a while ago, in the light of the preamble. The language of the resolution refers to the preamble; and what is already recited in the preamble? Not a cession actually made, but a willingness to make a cession, an expressed, manifest desire that they should be annexed to the United States, and that we are willing to accept them.

I admit that ordinarily the language would go further than that, but you must interpret it in the light of the preamble. I

say it is not a consummated transaction; it does not seem so to me, at any rate, when we simply pass this resolution, because we can not by a resolution affect the territories of other countries without their consent.

Mr. ALLEN. If I make a written proposition to transfer to the Senator certain property for a certain consideration and he accepts that in writing, is not that a consummated contract except so far as the mere fact of delivery is concerned?

Mr. FORAKER. Yes, it is.

Mr. ALLEN. Very well. When the Hawaiian Government, without any restriction or proviso, say they transfer their sovereignty to us, and we say we accept the transfer and thereby assume jurisdiction over that property, is not that a consummated contract?

Mr. FORAKER. I say this in regard to that, if the Senator from Nebraska will allow me, that they have made a tender to us. That is consummated upon our unqualified acceptance of it; but the recital of the preamble is only that they have manifested this willingness; but if this resolution goes to the extent that the Senator from Nebraska contends, I certainly do not object to it. I should be glad if the transaction were closed by the mere passing of this resolution. It may be possible that that may be the construction of it, and, if so, I would be pleased.

Mr. ALLEN. The question I regard as of the most importance is this: The proffered cession by the Hawaiian Government and the passage of this resolution recognize two parties to the transaction. Is not that correct?

Mr. FORAKER. Certainly.

Mr. ALLEN. Now, suppose one of the parties dies absolutely on the passage of this law as completely as by an ordinary treaty?

Mr. FORAKER. Certainly; and for that reason and because the whole transaction is ended I say it ought to be by act of Congress instead of by treaty.

Mr. ALLEN. If one of the parties dies by virtue of the passage of the joint resolution, why should we adopt this form?

Mr. FORAKER. We ought to adopt this form, as I have been trying to explain all the while, because, in my judgment, it is better to make a contract by legislation for the acquisition of the Hawaiian Islands than by a treaty, which is not, rightly considered, a contract executed by its consummation, but a continuing contract.

Mr. ALLEN. Not necessarily so.

Mr. FORAKER. I think it is necessarily so, or, at least, more properly so. Take the case I put a while ago of a cession by England to this country of an island, with the reservation of certain rights which we guarantee to preserve for her and protect her in the enjoyment of. That is a case for a treaty, because there is an existing contract which is to continue through years, and there are two parties to it. If it is a transaction that is consummated by merely signing the documentary evidence of it, I do not think it is necessary to have it by treaty.

Mr. ALLEN. I wish to say that there can be no force in what the Senator says, if he will permit me, on this proposition, because the Hawaiian Republic dies as quickly and as effectively by the passage of this resolution as by the adoption of the treaty.

Mr. FORAKER. Certainly; that is what I claim. It dies, no matter which way you consummate it; and because it dies alike in both cases, this is the preferable way.

Mr. ALLEN. Then, why should we throw aside all the traditions of our Government and all the precedents and undertake to avoid the constitutional objections of the necessity of two-thirds to ratify a treaty and adopt this resolution by a majority?

Mr. FORAKER. I say you do not throw away any tradition, nor do you throw away any precedent; on the contrary, you conform to the precedents in so far as precedent has anything at all to do with it. I know the Senator from Georgia [Mr. BACON] made a very able argument the other day to distinguish between the acquisition of Texas and the annexation of the Hawaiian Republic, the one being the admission of a State into the Union and the other the admission of territory, but in no case similar to this has it been held that you could not annex by statute or by joint resolution, because we have never had any such case. Then why should Senators talk about precedents and traditions?

Mr. ALLEN. I submit to the Senator that the question was submitted to a popular vote of the people of Texas.

Mr. FORAKER. If that is the point of objection, we are not talking about that. I have heard a great deal said about the people of Hawaii being consulted on this matter and about the iniquities of this thing on that account; that we should order a plebiscite and take the sentiment of the people there. Why, Mr. President, Senators who manifest such concern about the people of Hawaii being consulted about this matter seem to have overlooked the fact that the people of Hawaii have never in all their history been consulted in respect to the character of their government. They adopted a constitution in 1840, the first they ever had. Until that time they had an unlimited monarchy.

How did they get that constitution? The King simply promulgated it. Nobody was consulted. In 1852, when that constitution was changed, the people were not consulted. The King then simply promulgated an amended constitution. In 1864 they had the same thing over again; in 1887 the same thing again, and in 1893 Queen Liliuokalani was proceeding to do the same thing, and that precipitated the rebellion of that time.

Mr. WHITE. Mr. President—

Mr. FORAKER. Let me say further, before I conclude, that her predecessor had been elected by a legislative body, which consisted, I believe, of thirty or forty members. He had a majority of the legislative body, a very large majority, but when he was elected, the people, whom we are told must be consulted in all these things, rose in a riot; they had anarchy, they broke into the Government house, and undertook to murder the man who had been elected to be their King; and why and how was murder prevented?

Mr. President, it was prevented by the marines of two United States ships, which happened to be there in the harbor, being landed and being marched up to the Government house, taking possession, holding it for ten days, until that King who had been elected without any consultation of the people could be firmly established upon the throne he had taken. This talk about consulting the people of Hawaii is unusual in two respects.

The idea that our Government should go behind the Government of Hawaii in order to consult the citizens of that Republic is a thing unheard of in international law and diplomacy, and in the second place it is an extraordinary manifestation of interest in the suffrage rights of a people who never had any suffrage rights, who never were consulted in any case.

Mr. ALLEN. Does the Senator hold to the doctrine that the legislative and executive power of the Hawaiian Islands can transfer the sovereignty of that power and destroy its Government without consulting the people?

Mr. FORAKER. I hold that there is a Government in Hawaii, and that Government is called the Republic of Hawaii. It is acknowledged to be the lawful Government and the only Government in the islands of Hawaii, acknowledged not only by this Government, but by all the governments of the world that have acted in the matter at all, recognized as the true and lawful Government of the islands of Hawaii, and I say it is competent for that Government to act.

It is not for us to look how it was established, although I have no hesitation to look at that. I find no trouble about that. When that Government thus recognized sees fit to enter into a treaty with us, it would be an extraordinary thing if we were to undertake to consult the people behind it in order to see whether or not they were willing that their constituted authorities should make the kind of treaty they have proposed.

Mr. ALLEN. Then the Senator holds to the doctrine that the legislative branch of the Government, or any branch, or all combined, who are the agents of the Government to carry out its purpose, may lawfully and constitutionally overturn and destroy that of which they are the agents?

Mr. FORAKER. Unquestionably, when they are authorized to do so; and they are authorized by the constitution of Hawaii to do that very thing.

Mr. ALLEN. But it was established during a revolution.

Mr. FORAKER. Suppose it was. Is it not the lawful government? What was the revolution in Hawaii? There was not anything done in connection with the revolution that you and I and every Senator would not have joined in doing if we had been there.

Mr. BACON. I beg to enter a disclaimer for myself.

Mr. CAFFERY. Mr. President—

Mr. PETTIGREW. There is not a Senator on this floor who would be a party to such a transaction, and I will show that clearly before I get through.

Mr. FORAKER. That is a matter of opinion. I have read the history of that transaction in Hawaii, and I do not see that there was anything done by the representative of the United States in Hawaii that ought not to have been done to protect the property interests of our citizens and to protect the honor and dignity of this country.

Mr. ALLEN. If the Senator will permit me to say it—it may not be very germane, but I have no doubt—I was in the Chamber when the revolution took place—that the act of Mr. Stevens was absolutely and inexcusably unlawful, and if President Cleveland had promptly taken steps to right it and had not waited months and months until a change of government took place, I would have been one of the Senators who would have supported him.

Mr. FORAKER. After all that has been said, I say again, as I said before, that that is a matter of opinion. I have my opinion, and I say, having read the history of this transaction, that the representatives of the United States, and particularly Mr. Stevens, did not do anything in Hawaii with respect to the revolution which it was not their duty to do; and the fact that they landed the marines there is no more potent objection than when the

marines were landed a few years ago, to which I called attention a few minutes ago.

Mr. CAFFERY. This discussion is very interesting. I have not heard the whole of it, but I should like to know the Senator's position on the matter of the treaty. If I state his position correctly, I will follow it with a question. If I do not, the Senator will correct me. I think he stated that the Hawaiian Government authorized a tender, made a tender, of the territory of Hawaii; did not absolutely cede it, because they could not do so, but made a tender of cession.

Mr. FORAKER. Pardon me. What I said was this: I said the facts as recited in the preamble amounted to an expression of a willingness to cede it.

Mr. CAFFERY. Very well; amounted to a willingness to cede it.

Mr. FORAKER. To an expression of willingness.

Mr. CAFFERY. The Senator says when we accept it, when we meet that willingness by a joint resolution, that that does not amount to a full alienation of the territory of Hawaii to the United States; in other words, it is not a contract consummated.

Mr. FORAKER. Now, the Senator must remember what I said about that. I said that was a matter about which I was not disposed to raise any contention, but I thought it might be contended that because they expressed that willingness in the form of a treaty, which we had refused to ratify, they might say that they were not bound by such action as we are proposing to take, by joint resolution, because when they made the offer it was in the form of a treaty which we refused to ratify. Whether they will regard themselves as bound by this—I have no doubt they will—is a matter about which there might be debate. In my judgment, it would not be held that this was the end of the transaction, because the proffer was by treaty. But upon that I have no disposition to be contentious. I may be in error.

Mr. CAFFERY. In other words, they made the proposition in the form of a treaty, and we accept it in another form.

Mr. FORAKER. We made a proposition to take them at the same time they made a proposition to come. We both acted by treaty, and it was in the contemplation of both that we would act by treaty. I can understand, if the Senator will allow me to state more plainly what is in my mind, how the Republic of Hawaii might say, "I am perfectly willing to go in by treaty, as was agreed and contemplated and as I expressed a willingness to do, but I have some question about this procedure. I have read the debates of the distinguished Senator from Tennessee [Mr. TURLEY] and the distinguished Senator from Georgia [Mr. BACON] and other Senators to the effect that it is unconstitutional to take me in in this way, and I do not want to go in unconstitutionally. Therefore I decline to go in. This is a different road from the one we agreed upon." I have in my mind the thought that they might see fit to take some such action as that, if they are not willing to come now as they were when we negotiated the treaty, and in that event I think they would be free to take such position.

Mr. CAFFERY. I understand that if the Government of Hawaii accepts this joint resolution, it would then amount to a contract.

Mr. FORAKER. I think it would.

Mr. CAFFERY. Is that the Senator's contention?

Mr. FORAKER. It would be an executed contract, certainly, and the Government of Hawaii would pass out of existence. So, if we ratified the treaty, it would pass out of existence and there

would not any longer be a treaty. It would be an executed contract. There would be no longer two parties to the contract.

Mr. BACON. I should like to ask the Senator from Ohio a question in this connection. If, on the other hand, the Government of Hawaii were to refuse to stand by what it has heretofore agreed, would not the joint resolution be absolutely null and void and of no effect?

Mr. FORAKER. It is possible. That is what I have said.

Mr. BACON. There is no possibility about it. Must it not necessarily be so?

Mr. FORAKER. I do not say necessarily.

Mr. BACON. Unless we are going to enforce it by war, as a matter of compulsion.

Mr. FORAKER. I can explain to the Senator, if he will allow me, just what I have in my mind when I say "possible." If the view which I suggested as possible to be taken by Hawaii should be taken, that this was not a ratification of the treaty, that she had never proposed to come in in this way—if she should take that view of it and refuse, it might be construed that she has a right so to construe it. So it is one of the debatable propositions, because she did not offer to come in by a joint resolution. She offered to come in by treaty. If, on the other hand, she should say "I regard this as an acceptance," and I think she will, then she will come in.

Mr. BACON. In other words, the validity of the joint resolution must depend at least upon the consent and agreement of Hawaii. Is not that necessarily so?

Mr. FORAKER. Certainly. That is what I have contended all the time.

Mr. CAFFERY. Will the Senator permit me to ask him another question which I intended to ask? In response to my first inquiry he stated that the act of the Government of Hawaii was a mere tender, a mere expression of willingness to cede.

Mr. FORAKER. So the preamble recites.

Mr. CAFFERY. Then, if we accept by joint resolution the offer of willingness to cede, does that make anything more than an executory contract?

Mr. FORAKER. I say that is one of the debatable propositions. It is not necessary for me to pass upon it. I have called attention to the fact that I think there might be controversy over that. There is room there for argument as to what the construction should be. It is not necessary that I should settle it. What I am endeavoring to establish is that, according to my view, we may constitutionally accept the islands by legislative act.

Mr. WHITE. Before my friend the Senator from Ohio leaves the floor, if I am not interrupting him, and I feel that I have interrupted him several times, I should like to know whether he pays any attention to the thirty-second article of the Hawaiian constitution.

Mr. FORAKER. I have called attention to it.

Mr. WHITE. I should like to know whether he thinks that the general-welfare clause of the Hawaiian constitution covers all the omitted authority with reference to a grant of that Republic.

Mr. FORAKER. I have called attention to it already, and I will say to the Senator that I think we can afford to dismiss it by saying that is Hawaii's part of the business.

Mr. WHITE. If we are making a contract with a nation, I suppose the ability of the nation to contract is of some materiality. It is to me, although it seems it is not to the distinguished Senator from Ohio.

Mr. FORAKER. No; the Senator from California does me injustice when he imputes that I have no regard for the ability of Hawaii to contract. What I had in mind—I did not mean to be discourteous—in my answer to the Senator was that that is the constitutional provision. They have in making the treaty acted in conformity with the requirements of that provision. The Senator from California so contends, I believe.

Mr. WHITE. I do not. I say there has been no treaty made.

Mr. FORAKER. I know; in proposing the treaty, then. There is no contract.

Mr. WHITE. They have taken one step.

Mr. FORAKER. I know. In proposing that they have acted in conformity with the Constitution. If we should ratify the treaty and they should ratify it—I believe they have ratified it—there would be a treaty, and they would have acted in conformity with that provision of the Constitution. Now, then, how they will act when the joint resolution is passed I do not know. That is something to be hereafter dealt with. What I meant to say to the Senator was that it has no relation to the question I am arguing, of the constitutional power of Congress to accept the territory.

Mr. WHITE. I feel, as the Senator from Ohio is a member of the Committee on Foreign Relations and the only member of the committee who has thus far ventured any defense of what I consider to be a very preposterous proposition—

Mr. FORAKER. Let me say to the Senator that he does the Foreign Relations Committee a very great injustice when he makes that remark. The Senator from California must remember, and it ought to be made to appear in the RECORD, that we considered the treaty for months in executive session, and in executive session this whole subject was most elaborately and exhaustively discussed by the friends as well as the opponents of annexation.

Mr. WHITE. And having been so discussed, the distinguished Senator comes here admitting the justness of criticisms made upon the phraseology of this long-entertained resolution, and expresses doubt as to whether the measure, which was thus long considered and reported after great deliberation, was in reality the proper method of procedure.

Mr. FORAKER. The Senator from California is unwarranted in his statement that I admit that there is ground for criticism of the language employed. The fact that I might not have employed the word "cession" is not equivalent to criticising it. I contend that it is a perfectly appropriate word when considered in the light of the context, as it should be considered. There can not be any question as to what is meant by the word "cession," because it says the "said cession."

Mr. WHITE. What the preamble says is very little said, as we know in usual matters of legislation. The word "cession" has a well-defined meaning, admitted by the Senator from Ohio to be in accordance with the definition given to it by myself and other Senators upon this side of the Chamber. That resolution is now before the Senate. It is not a case where we are considering something done and attempting to find out the meaning of a legislative body which has passed a law, but we are now framing a law containing an admitted ambiguity which there is no suggestion to correct.

Mr. FORAKER. So the word "grant" has a definite meaning.

Mr. WHITE. Certainly.

Mr. FORAKER. If you use it with respect to personal property and the context shows it, every court would say it has reference to the passing of personal property and interpret it accordingly.

I am much obliged to the Senator from Tennessee [Mr. TURLEY].

Mr. WHITE. I wish to thank the Senator from Ohio for his liberality to me in the matter of interruption.

Mr. CLAY. Will the Senator from Ohio permit me to ask him a question?

Mr. FORAKER. I have an engagement to be at the depot at 3.45, and it is now 3.30.

Mr. CLAY. Just one minute. I understood the Senator to state on the floor of the Senate that it was absolutely necessary to acquire the Louisiana purchase by treaty from the simple fact that there were continuing rights to be enforced by the United States to the people occupying that territory. If the Senator takes that position, is not the case now pending before us a similar one? If we adopt the joint resolution, are there not continued rights due from us to the people of that island? Is it not true that the argument which he has applied to the purchase of Louisiana would apply in this case?

Mr. FORAKER. Not at all. The case of Louisiana affords ground for the broad distinction which I have been making. The French owned Louisiana and they ceded it to the United States. The French Government continued in existence. They ceded it, not merely for a sum of money, but upon certain stipulated conditions as to the rights of the occupants and inhabitants of the country, which conditions continued into the future. Therefore, I say it was a case where a contract was made and the contract did not perish when it was consummated, because both parties continued to exist afterwards as before. But here the distinction is that the minute you consummate the contract the Republic of Hawaii falls to the ground, and there can not be such a thing as a contract without parties.

Mr. PETTIGREW. There are conditions in the treaty which we have to carry out.

Mr. FORAKER. To pay money.

Mr. PETTIGREW. We assume a debt.

Mr. FORAKER. We assume to pay a debt, and the very moment that the treaty is ratified, if it should be, the people of the Republic of Hawaii become citizens of the United States, become our subjects, pass under the dominion of our law, and the Government of the Republic of Hawaii passes out of existence.

Mr. PETTIGREW. The only distinction is that there is no country in existence that can punish us for breach of contract.

Mr. FORAKER. The only distinction is that there is not any contract where there are not two parties.

Mr. PETTIGREW. There are two parties when the contract is made.

Mr. FORAKER. Certainly; and the contract was consummated when it was made. That is all the distinction there need be.

Mr. PETTIGREW. Its terms do not carry consummation when made.

Mr. FORAKER. It is not a question of good faith. We are talking about the constitutional power—whether of necessity this must be done by treaty, and I say no.

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